In the

United States Circuit Court of Appeals

For the Ninth Circuit

No. 4839

CHAN HAI, Appellant,

vs.

LUTHER WEEDIN, as Commissioner of Immigration at the port of Seattle, Washington, Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

HONORABLE JEREMIAH NETERER, JUDGE

Brief of Appellee

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STATEMENT OF THE CASE

The appellant, Chan Hai, arrived at the Port of Seattle, Washington, January 11, 1926, on the steamer "President McKinley," and applied for admission to the mainland of the United States as a merchant of Manila, P. I. He was accorded various hearings before a Board of Special Inquiry at the Seattle Im-

migration Office and, on January 20, 1926, was denied admission under the Chinese Exclusion Law and for the additional reason that he was an alien ineligible to citizenship, not admissible under Section 13(c) of the Immigration Act of 1924. Thereafter an appeal was taken from this decision of the Board of Special Inquiry to the Secretary of Labor at Washington, D. C., his appeal was dismissed and he was ordered deported. Thereafter a petition for a writ of habeas corpus was filed in the United States District Court for the Western District of Washington, Northern Division, which petition was denied by said court. The case now comes before this court on appeal from that decision.

ARGUMENT

Counsel for the appellant sets up the claim that the sole question for this court to decide is the point mentioned by the District Judge in his decision denying the writ, i. e., the infancy of the appellant and his consequent incapacity to become a merchant in this country, if admitted. This claim by counsel is, of course, not well founded, as it was not necessary for the District Court to mention in its decision every point raised in the case, and the fact that said court did not do so does not preclude this court from passing upon other questions.

There Are Several Questions Involved in This Case

I. Does the paper presented by the appellant comply with the law, even if issued by proper authority?

II. Was the paper presented by appellant issued by proper authority?

III. Is the appellant an alien ineligible to citizenship, not admissible under Section 13 (c) of the Immigration Act of 1924?

IV. Has the paper presented by the appellant been controverted?

V. Is the appellant entitled to be classed as a "merchant"?

I.

Section 6 of the Act of 1882-1884 (23 Stat. L. 117, Chap. 220) provides:

"That in order to the faithful execution of the provisions of this Act, every Chinese person other than a laborer, who may be entitled by said treaty or this Act to come within the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such government, which certificate shall be in the English language, and shall

show such permission, *with the name of the permitted person in his or her proper signature.*" (Italics ours.) * * *

The paper presented by the appellant purports to be a certified copy of an original certificate which is on file in the Manila Custom House. It does not show the appellant's signature and, therefore, does not comply with the law.

The courts have held that a Section 6 certificate must comply strictly with the requirements of the statute.

U. S. vs. Pin Kwan, 100 Fed. 609, 40 C. C. A. 618;

Cheung Pang vs. United States, 133 Fed. 392.

II. AND III.

The Acts of April 29, 1902, and April 27, 1904, (32 Stat. L. 176 and 33 Stat. L. 394) extended the above-quoted provisions to insular territory under the jurisdiction of the United States and provide that the Section 6 certificate prescribed by the Act of 1882-1884 shall be granted by officers designated for that purpose by the chief executives of such insular territories. In executive order No. 38, issued by the Civil Government of the Philippine Islands September 23, 1904, the Collector of Customs for the Philippine

Islands was designed as the proper officer to issue such Section 6 certificates to *citizens of the Philippine Islands of Chinese descent.* (Italics ours.) Rule 11 of the Rules Governing the Admission of Chinese designates the Chinese Consul General at Manila as the official empowered to issue such certificates to *citizens of the Chinese Republic* residing in the Philippines.

The appellant stated that he was born in China and that his father was of the Chinese race and his mother a Filipino woman; that his father died in China sixteen years ago; that his mother went from China to Manila in 1912, leaving him and his six brothers in China; that his mother died in Manila eleven years ago. The appellant was eighteen years of age at the time of his arrival at the port of Seattle, and claimed to be a citizen of the Philippine Islands.

A fundamental rule of law is that a person is a citizen of the country in which he was born. In this country citizenship has been extended to children born abroad whose *fathers* were citizens of the United States at the time of the birth of said children (Sec. 1993 R. S.). There is nothing in the present record to indicate that the appellant's *father* was ever a citizen of the Philippine Islands or that the appellant is other than a legitimate son of his alleged father and mother. The appellant presented no passport

as a citizen of the Philippine Islands and the only evidence in support of his claim that he is such citizen is a notation appearing on the paper he presents, as follows:

"Landed as P. I. citizen, natural son of Antonia Sobre, a Filipino woman, C. B. R. 2950, case 7."

The above notation seems to indicate that the appellant was recognized as a citizen of the Philippine Islands by the Customs authorities of those islands, but does not indicate that such citizenship was ever recognized by any court. It is, therefore, not res adjudicata.

It appears that the sole basis of the admission to the Philippine Islands of the appellant and his six alleged brothers was the statement of a Filipino woman that all these boys were sons of her deceased sister. In this connection the appellant stated that he first saw this woman in China when he was a small boy and never saw her again until she testified in his behalf when he was applying for admission to the Philippine Islands; that he never saw her afterwards except when his younger brother went to the Philippine Islands. The appellant was never in the Philippine Islands until March 21, 1925.

In view of the foregoing it does not appear that the Immigration Officials of this country were under any

obligation to recognize the appellant as a citizen of the Philippine Islands and it is not understood under what principle of law he was so recognized by the Philippine Customs authorities. If they had no warrant of law for recognizing him as such citizen, as appears to be the case, the United States Government is certainly not bound by their action.

Unless the appellant's Philippine citizenship is conceded, the paper which he presented is of no value, as it was issued by the Collector of Customs of the Philippine Islands, who has authority to issue such documents to *citizens of the Philippine Islands only.* The Secretary of Labor maintained and we also contend that it has not been shown that appellant is a citizen of the Philippine Islands and that *he must be considered a citizen of China.* Therefore the paper which he presents was not issued by proper authority and is of no value and, being of the Chinese race, appellant is an alien ineligible to citizenship, not included in any class of such aliens specified as admissible by Section 13 (c) of the Immigration Act of 1924.

IV.

The paper presented by appellant shows: "Estimated value of business prior to application, P.5000.00. Estimated value of business at time of

application, P.5500.00." The appellant stated that the value of the business at the time his paper was issued was a little over $5,000 gold, and was about the same at the time he testified. As the appellant's statement on arrival gives the value of the business of his alleged firm as about twice that shown in the paper which he presented, his statement constitutes a material controversion of his paper.

The appellant states that his firm consists of himself and his six brothers and is engaged in the exporting and importing business in Manila. He also states that *his firm had no name.* How it could be reasonably possible for an importing and exporting concern to transact business without some sort of a firm name to do business and conduct correspondence under is extremely difficult to understand.

The appellant also states that he was not at the store when the representative of the Philippine Customs investigated the store, and knows nothing regarding what investigation he made, except that his brothers told him that such a person had been at the store. Appellant claims that at first he was manager and later bookkeeper for the firm but was not even able to state what rent was paid for the store.

V.

Counsel for the appellant, on pages eight and nine of his brief, gives citations in support of his contention that the statute defining a "merchant" *should receive a reasonable construction.* We agree that both the statute and the Treaty of 1880 should receive such construction.

The construction which Congress placed upon the term "merchant" is evidenced by the language of the Act of November 3, 1893, (28 Stat. L. 7), when it specified that, in order to be admissible on the ground that he was formerly engaged in this country as a merchant, a Chinese must establish by the testimony of two credible witnesses other than Chinese that he had conducted a mercantile business for at least one year prior to his departure from the United States. While the treaty of 1880 with China does not contain any definition of a merchant and does not specify any length of time a Chinese must be a merchant in China to be entitled to a Section 6 certificate, it would seem reasonable to hold that a Chinese who has never been in this country should not be accorded more leniency in the matter of time as a merchant than one who has already been a resident here for perhaps many years.

The appellant claims that he was born on a Chinese date equivalent to May 15, 1907, and was therefore less than eighteen years old when he claims to have established the business in question. He will not be twenty-one years old until May 15, 1928. Consequently he is an "infant" in law and has not the capacity to enter into any other than a voidable contract, nor to sue or be sued in a court of law without having a guardian ad litem appointed to represent him. He claims that the firm on which he predicates his mercantile status was established April 1, 1925, —ten days after his arrival at Manila—and, according to the paper he presented, his application for a merchant's certificate was made August 24, 1925,—*less than five months later.* This would seem to indicate plainly that the purpose of establishing this alleged importing and exporting concern was primarily to form a colorable basis for the appellant—and probably all six of his alleged brothers—to gain admission to the mainland of the United States. (The appellant is the fourth member of this alleged family to apply for admission. The other three were excluded and deported.)

Article II of the Treaty of 1880 applied to Chinese subjects *proceeding to* the United States as teachers, students, merchants, etc. (Italics ours.) It does not necessarily apply to all Chinese WHO MERELY SAY

that they are proceeding to this country as such. This treaty also, as far as merchants are concerned, was undoubtedly intended to promote commerce between China and the United States, and the Act of 1882-1884 and the subsequent laws regulating the admission of merchants and other admissible classes of Chinese were passed in pursuance of and to carry out the provisions of said treaty, and also to provide for the admission of admissible persons of the Chinese race who were citizens of countries other than China. It is believed that, in the absence of any specific definition of a merchant in China or any other foreign country, the treaty and the laws are entitled to a reasonable construction and that the term "MERCHANT" should be construed *in accordance with the evident intent* of such treaty and laws.

Does it seem reasonable to contend that this country entered into a treaty with China and passed laws to execute the terms of that treaty and to apply to Chinese citizens of other countries, for the purpose of allowing Chinese boys, 18 years old, without the capacity to enter into binding contracts, to enter this country under the guise of "merchants" because they may have been connected with some store in China or some other country for a few months? WE DO NOT THINK SO.

If this appellant is entitled to the status of a "merchant," it would seem that any school-boy of any age who has been connected with a store for any length of time—no matter how short a time—would be entitled to the same status. We cannot believe that the treaty was negotiated between this country and China for any such purpose or that, when the law was passed regarding the admissibility of Chinese merchants, Congress had any such class of persons in view. The reasonable view to take would be that Congress had in mind *bona fide merchants* who were physically, mentally, financially and legally competent to transact a mercantile business in this country.

That the Collector of Customs at Manila (or whoever handles this class of work in the Manila Custom House) has very little conception of the requirements of the laws regulating the admission of Chinese to the mainland of the United States seems to be amply evidenced by the records of the three alleged brothers of the present appellant, which are exhibits at this time. In all three of these cases so-called Section 6 certificates were issued, showing the occupation of the persons referred to in said certificates as EMPLOYEE, which gave them no standing whatever as indicating that they were admissible under said laws, and all three were deported. It is believed that the

present case constitutes another instance of misapprehension of the intent, at least, of such laws.

The statement of counsel for appellant as to the kind of papers held by the three alleged brothers is erroneous and his statement that appellant's exclusion was based on the action taken in the alleged brothers' cases does not appear to be supported by the record.

The case of *United States vs. Joe Dick*, 134 Fed. 988, cited by counsel, does not appear to have any particular bearing on the present case.

Counsel also cites the case of *United States vs. Moy Non*, 249 Fed. 772, decided by the District Court for the Northern District of Iowa, April 2, 1918, in an attempt to justify his contention that the District Court erred in denying the writ in this case. The case cited was an appeal from an order of deportation issued by a United States Commissioner. The opinion of the District Court shows that the then appellant came to the United States with his father about 1890, at the age of twelve or thirteen. He had obtained a return certificate as a merchant in 1911 and his father had returned to China sometime prior to 1912. The appellant had participated in the business of the Hip Lung Company for some time prior to 1912, with an interest of $1,000. The fact whether or not MOY

NON, the then appellant, obtained his interest in the Hip Lung Company before he was twenty-one years old does not appear in the decision and was of no importance whatever as bearing on the merits of the case. He had proven a mercantile status in 1911, when he was 32 or 33 years old. The number of years he had been a merchant before that was not an issue in the case and consequently the quotation from the opinion cited by counsel was pure dictum and, even if it were not such, it would, of course, have no controlling influence on the decision of this court.

We maintain that the appellant was accorded a fair hearing by the Immigration officials; that the District Court committed no error in denying the writ of habeas corpus; that its decision should be *affirmed.*

Respectfully submitted,

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